



*City of  
Encinitas*

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APR 12 1996

April 10, 1996

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

Re: Comments on Implementation of Section 302 of the Telecommunications Act of  
1996, CS Docket No. 96-46

Dear Mr. Caton:

Enclosed are comments from the City of Encinitas regarding the above referenced matter.  
Please find an original and four copies

Respectfully submitted.

Richard Phillips  
Management Analyst

cc: Larry Walke, Cable Services Bureau  
International Transcription Services, Inc.  
NATOA

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

APR 12 1996

FILED

In the Matter )  
 )  
Implementation of Section 302 of )  
the Telecommunications Act of 1996 )  
 )  
Open Video Systems )

CS Docket No. 96-46

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REPLY COMMENTS OF CITY OF ENCINITAS, CALIFORNIA

The CITY OF ENCINITAS respectfully submits these reply comments to the Federal Communications Commission ("Commission" or "FCC") in the above-captioned proceeding.

I. INTRODUCTION

On March 11, 1996, the Commission released a Notice of Proposed Rulemaking (FCC 96-99) ("Notice"), requesting comment on how it should implement the regulatory framework for open video systems ("OVS"). In response, the National League of Cities, the National Association of Telecommunications Officers and Advisors, the National Association of Counties, the U.S. Conference of Mayors, Montgomery County, and several cities (hereinafter "NLC"), filed joint comments containing specific proposals for implementing that framework.

In their comments, NLC identified four key principles that must guide the Commission in formulating its rules. First, the Commission's rules regarding the Public, Educational and Governmental access (PEG) and other Title VI requirements mandated by Congress for OVS must ensure that OVS operators will meet local community needs

and interests. Second, the Commission must adopt nondiscrimination provisions that ensure that all programmers will have truly open and affordable access to OVS and that prevent an OVS from becoming a cable system in disguise. Third, The 1996 Telecommunications Act does not permit cable operators to become OVS operators. Fourth, the Commission's rules must acknowledge the property interests that local governments hold in the local public rights-of-way.

The City of Encinitas strongly supports NLC's comments and urges the Commission to follow these four principles in formulating OVS rules. In 1995, a Community Needs Assessment was conducted as part of a cable television franchise renewal process. The methodology for assessment of community needs included: 1) a survey form sent to every household, 2) public workshop, and 3) an institutional needs questionnaire. Based upon the needs assessment results, key recommendations regarding PEG access included:

1. Access and video production training should be provided by cable operator to subscribers and residents.
2. The City should require the cable operator to provide one public access channel, one educational channel and one governmental channel (PEG Access Channels).
3. Provisions should be made for additional PEG Channels to be added to system as need is demonstrated.
4. PEG access equipment should be funded through an equipment grant by operator.

The City is in the final stages of development for a franchise renewal with the primary cable operator. Community needs are being addressed by requiring the cable operator to designate PEG access channels to the City (currently, channels are shared with six other jurisdictions with no public access available to Encinitas City residents, nor reasonable scheduling for airing of public meetings). Regulations must be implemented to insure local community need and interest obligations are also met by OVS operators.

## I. DISCUSSION

The Commission's statutory mandate in adopting PEG requirements for OVS is clear. As NLC notes, the Telecommunications Act of 1996 requires the Commission to establish PEG obligations for OVS that are consistent with local needs and interests, and to impose on an OVS operator obligations equivalent to those obligations imposed on cable operators. To fulfill these mandates, the Commission should, as proposed by NLC, require OVS operators "to match or negotiate," that is, to match each incumbent cable operator's PEG obligations, or to negotiate agreements acceptable to the affected communities.

The record in this proceeding demonstrates that local governments -- as franchising authorities and PEG programmers -- play a critical role in ensuring that local communications needs and interests are met.<sup>1</sup> Moreover, local governments, as the

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<sup>1</sup> See, e.g., Comments of the Below-Named Political Subdivisions of the State of Minnesota at 7 (franchising authorities have "considerable experience in successfully negotiating, creating and implementing...PEG obligations"); Comments and Petition for Reconsideration of the National Cable Television Association, Inc. at 34 ("The local franchising authority is the governmental entity best positioned to appreciate community needs and most experienced in the implementation of PEG access rules"); and Joint Comments of Cablevisions Systems Corporation and the California Cable Television Association at 21 ("Congress certainly understood that PEG access requirements are now imposed by localities to meet critical localism goals").

National Cable Television Association states, “are in the best position to deliver on the Act’s intent to accomplish PEG access over open video systems.”<sup>2</sup>

The PEG capacity scheduled for implemented in the City of Encinitas by January 1, 1999 provides access for educational and governmental and local origination programming. Televising of public meetings, notification of local community events and enhanced opportunities for educational programming are planned to be offered upon implementation. Local origination programming, previously denied Encinitas residents, will be provided through training, studios time, equipment utilization and airing.

By adopting NLC’s proposal, the Commission will ensure that PEG access continues to serve local needs and interests in the City of Encinitas, and will satisfy the Commission’s statutory mandate to impose equivalent obligations on OVS and cable operators.

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<sup>2</sup> Comments and Petition for Reconsideration of the National Cable Television Association, Inc. at 33. See also Comments of MFS Communications Company, Inc. with the PEG obligations should generally be worked out between the programmer and the local government entity that oversees the implementation of these rules for cable operators”).

### III CONCLUSION

The City of Encinitas respectfully requests the Commission to adopt a framework for OVS consistent with the proposals and principles recommended by NLC et al. in their comments.

Respectfully submitted,

CITY OF ENCINITAS

By: Richard Phillips

A handwritten signature in black ink, appearing to read 'R. Phillips', with a stylized flourish at the end.

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